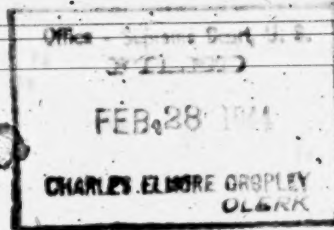


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No.  33

**In the Supreme Court of the United States**

**OCTOBER TERM, 1943**

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER**

**v.**

**C. C. HARMON**

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH  
CIRCUIT**

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES CIRCUIT COURT OF APPEALS FOR THE TENTH  
CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Tenth Circuit, entered in the above case on December 2, 1943, affirming the decision of the Tax Court of the United States.

## **OPINIONS BELOW**

The opinion of the Tax Court (R. 46-72) is reported in 1 T. C. 40. The opinions in the Circuit Court of Appeals (R. 93-101) are not yet reported.

## **JURISDICTION**

The judgment of the Circuit Court of Appeals was entered on December 2, 1943 (R. 101). The

jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

#### QUESTION PRESENTED

On July 29, 1939, Oklahoma adopted a community property statute operative only when an election to come under the statute is made by the husband and wife. The taxpayer and his wife, who were residents of Oklahoma, made such an election effective as of November 1, 1939, and during the remainder of the year received income consisting of earnings of the husband and income from the separate property of each spouse, all of which was designated by the Oklahoma statute upon election as "community income." The question for decision is whether, for purposes of the federal income tax, this income may be divided equally between the spouses in separate returns with a consequent reduction in surtaxes.

#### STATUTES INVOLVED

The statutes involved are set forth in Appendix A, *infra*, pp 15-23.

#### STATEMENT

By legislative enactment effective July 29, 1939, the State of Oklahoma adopted a community property law operative only when an election to come under the law is made by the husband and wife. On October 26, 1939, the taxpayer and his wife filed with the county clerk of Nowata

County, Oklahoma, a "Community Property Election," stating that they desired to avail themselves of the provisions of the Oklahoma Community Property Law and to have the law apply to them and their property. A certified copy of the election was filed in the office of the Secretary of State of Oklahoma on October 27, 1939. By reason of this election the Oklahoma Community Property Law applied to them and their property on and after November 1, 1939 (R. 48).

During the period from November 1 to December 31, 1939, inclusive, the taxpayer and his wife received income consisting of (a) earnings of the taxpayer; (b) income from the taxpayer's separate property; and (c) in a smaller amount, income from wife's separate property. All of this income is designated upon election as community income under the Oklahoma Community Property Law. The taxpayer and his wife filed separate income tax returns for 1939 in which each reported one-half of the foregoing income<sup>1</sup> (R. 48-49).

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<sup>1</sup> They also divided the deductions attributable to that income. (R. 48-49.) No question arises with respect to the deductions, the parties being agreed that if the income is to be divided between the spouses, the deductions are likewise to be divided, except for one item representing a charitable contribution of the taxpayer. The Tax Court held that this item was personal to the taxpayer and therefore not an allowable deduction against the community gross income. (R. 65.) The parties are likewise agreed that the Tax Court's holding on this point is correct.



The Commissioner ruled that the spouses were not entitled to divide this income between them for purposes of the federal income tax, that the taxpayer was taxable on all the income derived from his earnings and from his separate property, and his wife was taxable on all the income derived from her separate property, and determined a deficiency of \$11,029.95 against the taxpayer (R. 15-27). The Tax Court reversed the Commissioner's determination, holding that the spouses were entitled to divide the income in question for purposes of the federal income tax (R. 46-65).<sup>2</sup> The Circuit Court of Appeals, one judge dissenting, affirmed the Tax Court's decision (R. 93-101).

#### **SPECIFICATION OF ERRORS TO BE URGED**

(1) The Circuit Court of Appeals erred in holding that the Oklahoma Community Property Law is effective to permit the taxpayer to return for federal income taxation only one-half of the income derived from his salary and separate property.

(2) The Circuit Court of Appeals erred in failing to hold that, notwithstanding the Okla-

↪ In his determination of the deficiency the Commissioner had also disallowed deductions claimed on account of the worthlessness of certain oil and gas royalty interests. The Tax Court reversed the Commissioner's determination on this point (R. 65-72), and no appeal was taken from this part of the decision. The point is therefore no longer involved in the case.

Oklahoma Community Property Law, the taxpayer is taxable on all of the income derived from his salary and separate property.

(3) The Circuit Court of Appeals erred in affirming the decision of the Tax Court.

#### REASONS FOR GRANTING THE WRIT

(1). This is the first case involving the effect upon the federal income tax of an elective community property law such as that adopted by Oklahoma.<sup>3</sup> The question is one of great impor-

Contemporary evidence shows rather clearly that the Oklahoma statute here involved was aimed directly at the federal income tax and was adopted in order to afford Oklahomans a ready means of reducing their federal tax liabilities.

An excerpt from a letter of Honorable Richard Jones, Head of the Legal Division of the Oklahoma State Tax Commission, appearing in P. H. Oklahoma State Tax Service, par. 13.001, discloses the following:

"This Bill [Oklahoma Community Property Law] was introduced by Representative Bill Latting from Tulsa, but I understand that in the preparation of this Bill, he had the assistance of several of you tax men who were interested in working out a community property law that would have the effect of stopping an exodus of wealth and capital from our State into the adjoining States of Texas and Louisiana, where they could secure the benefits of Community Property in the preparation of their Federal Income Tax Returns."

Campbell and Mosteller, in *Developments Relating to the Oklahoma Community Property Act*, 13 Okla. B. A. J. 49 (1942), state:

"In an effort to halt this migration, [to community property states] the Sixteenth Session of the Oklahoma Legislature enacted the Oklahoma Community Property Act. \* \* \*

"The Community and Intangible Property Acts not only have halted the flight of citizens from the State, but also in-



tance to the revenue, for it affects the potential tax liability of all spouses in Oklahoma, and it has been estimated that if the law is effective to accomplish its purpose in relation to federal tax liability, it has resulted in reducing federal revenue in Oklahoma for the last two months of 1939 and the year 1940 by approximately \$1,500,000.<sup>4</sup>

Moreover, a similar problem exists in Oregon for in 1943 it also adopted an elective community property law. Oregon Laws (1943), c. 440. If the decision below should be allowed to stand unchallenged, other states may well be induced to adopt a similar elective community property

fluenced new citizens to take up their residence in the State, and former residents to return to the State in which their fortunes were made. The latest prominent man so to return is the chief executive of one of our largest independent oil companies, who recently publicly announced that he had re-established his domicile in Oklahoma.

"The primary purpose of the Oklahoma Community Property Act having been accomplished \* \* \*."

In Daggett, The Oklahoma Community Property Act (1940), 2 La. L. Rev. 575, 576, note 6, reference is made to letters received by the writer from the Oklahoma Secretary of State, the Dean of the Oklahoma Law School, and an officer of a Texas trust company, all indicating that the Oklahoma Act was enacted to give a federal income tax advantage to Oklahomans and prevent their exodus to Texas.

<sup>4</sup> Campbell and Mosteller, *supra*, note 3. Of course the amount of revenue at stake for the years since 1940 is much greater, in view of the sharply increased surtax rates of recent years.

system in order to secure tax advantages for their citizens.<sup>5</sup>

2. In concluding that the Oklahoma statute is effective to allow spouses so electing to divide their incomes for purposes of the federal tax, the courts below relied upon *Poe v. Seaborn*, 282 U. S. 101, and its companion cases (*Goodell v. Koch*, 282 U. S. 118; *Bender v. Pfaff*, 282 U. S. 127; *Hopkins v. Bacon*, 282 U. S. 122; *United States v. Malcolm*, 282 U. S. 792), which decided the issue for the eight traditional community property states.<sup>6</sup> We think that the courts below have misconceived the meaning and effect of those decisions in applying them to the instant

<sup>5</sup> Oklahoma is the first state to adopt a community property system since the inception of the present federal income tax. In the eight traditional community property states (see footnote 6, *infra*) that system of marital property rights long antedated the tax.

<sup>6</sup> Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas and Washington.

The decisions have been widely criticized. See, e. g., Haney, J., dissenting in *Black v. Commissioner*, 114 F. (2d) 355, 360 (C. C. A. 9), and *Commissioner v. Cadwallader*, 127 F. (2d) 547, 550 (C. C. A. 9); Ray, *Proposed Changes in Federal Taxation of Community Property*, 30 Cal. L. Rev. 397, 407 (1942); Oliver, *Community Property and the Taxation of Family Income*, 20 Tex. L. Rev. 532, 555 (1942); Altman, *Community Property in Peril*, 19 Tax Mag. 262 (1941); Lowndes, *Community Income and Alimony*, 20 Tax Mag. 3 (1942); 1 Paul, *Federal Estate and Gift Taxation* (1942), Section 1.09, and materials collected therein at p. 50, fn. 1.

case. The outstanding point of difference lies in the elective feature of the Oklahoma law; it is operative only if the spouses so elect. We think that this characteristic is alone sufficient to require a different result from that reached in the early community property cases, and that the amounts involved were "income of" the husband within the scope of the Internal Revenue Code, *infra*, p. 15.

(a) With respect to that part of the income represented by the taxpayer's salary the elective feature of the Oklahoma law has particular significance, for it makes the case indistinguishable from *Lucas v. Earl*, 281 U. S. 111. See also *Helvering v. Eubank*, 311 U. S. 122. In the *Earl* case the taxpayer had entered into a contract with his wife in 1901, providing that any property thereafter acquired by either should be received and owned by them as joint tenants. It was held that the husband was taxable for the whole of salary and attorney's fees earned by him in the years 1920 and 1921. The Court pointed out (p. 115) that "anticipatory arrangements and contracts however skilfully devised" are ineffective to prevent the taxation of salary to the person who earns it. We submit that no basis exists for any distinction between the voluntary "anticipatory arrangement" of the spouses in the *Earl* case, sanctioned by the local law, and the volun-

tary "anticipatory arrangement" of the spouses in the instant case.

It is true, as the majority opinion below points out (R. 98-99), that in some of the traditional community property states the spouses may elect to have the community property system not apply for the future. But to argue that this is the same as the privilege to elect into a community property system is to miss the entire basis of the decisions in *Poe v. Seaborn*, and its related cases. The rationale of those decisions was that the community property system operated automatically by virtue of the *marital status* of the parties; that is not true in Oklahoma. Moreover, in the traditional community property states the effect of the system cannot be abrogated except by the combined action of the spouses, and thus either is in position to prevent any change from the system. On the other hand, under Oklahoma's statute the community property system does not apply unless both spouses so agree, and thus either is in position to prevent application of the system. When Oklahoma spouses do enter into such an agreement the situation is in no sense comparable to that in which the legal relationship of husband and wife to their property flows automatically from their marital status; on the contrary, such an agreement is indistinguishable from the kind of agreement involved in *Lucas v. Earl*.

(b) The elective feature of the Oklahoma statute is significant also with respect to the income from the taxpayer's separate property, for as to that income the case likewise presents fundamentally nothing more than a voluntary private arrangement for the future division of income. Insofar as this portion of the income is concerned the decision below is, in our view, in square conflict with such decisions of this Court as *Helvering v. Clifford*, 309 U. S. 331; *Helvering v. Horst*, 311 U. S. 112; and *Harrison v. Schaffner*, 312 U. S. 579. The principle of these cases is that even though the owner of property makes a definitive and irrevocable disposition of the right to the income thereof, the income continues to be taxable to him as it is realized if he is the owner of the property from which the income is derived. Retention of an interest in the income itself is not necessary; ownership of the source of the income is equivalent to command over the income. It should be noted in this connection that the Oklahoma statute specifically provides (Sec. 53, Appendix, *infra*, p. 17):

The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act.

In the instant case, regardless of how complete an interest his wife might have in the income representing interest, royalties, etc., from the tax-

payer's separate property, that income is taxable to him in full because he alone owns the property from which it is derived.

It is especially to be observed that this question has not been before the Court in any of the other community property cases. The record does show in *Hopkins v. Bacon, supra*, which arose in Texas, that part of the income there involved was income from the wife's separate property, which, by Texas law, was community income. However, no one contended there that no part of that income should be taxed to the husband, the Government's position being that he was taxable on all of it because he had control over it, and the taxpayer's that he was taxable only on half. No issue was involved similar to that herein presented, namely, that regardless of whether the income is itself community property, if it is derived from separate property it is taxable to the owner of the property.

3. *Poe v. Seaborn* and its related cases are inapplicable here for another and basic reason. As the dissenting opinion below points out (R. 100-101), the Oklahoma Community Property Law introduces a community property system which is one in name only, and not in its substantive effects. Section 56 of the Oklahoma statute (Appendix, *infra*, p. 18) provides that:

The wife shall have the management and control and may dispose of that portion



of the community property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name.

The next sentence of this section provides that:

"The husband shall have the management and control and may dispose of all other community property \* \* \*".

Since the income involved in the instant case is income derived by the husband from his earnings and from his separate property, he has "the management and control and may dispose of" it. Section 57. (Appendix, *infra*, p. 19) provides that that portion of the community property

\* \* \* which is under the management, control and disposition of the husband shall be subject to debts contracted by the husband or liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife.

It seems plain that any interest which the taxpayer's wife has in the income here involved is a tenuous one at best. For example, the taxpayer could borrow money and use it as his fancy dictated, and then later repay the debt with this so-called community income. Moreover, if the wife should incur any debts they could not be satisfied out of this so-called community income. Therefore, any interest which the taxpayer's wife

has in the income here involved is so gossamer in nature that, of the previous community property decisions of this Court, *United States v. Robbins*, 269 U. S. 315, more clearly fits the pattern here than does *Poe v. Scaborn*. The *Robbins* case dealt with the federal tax effect of the California community property system prior to various amendments made in the local law from 1917 through 1927, and held that the husband's earnings and other community property were taxable in full to him because of the insubstantial nature of the wife's interest.

More detailed analysis of the substantive effect of the Oklahoma Community Property Law furnishes additional demonstration that the statute did not work any significant change in the established marital property system of the state. No more has been done than to place the label of "community property" on the income. A comparison of the relative rights of spouses not electing the community property system with those who do, as set forth in Appendix B, *infra*, pp. 24-25, illuminates the point.

From that analysis it is evident that election of the Oklahoma system of community property works no change in the wife's interest in her husband's earnings and the income from his separate property with the minor exception of her rights with respect to the devolution of the property.

## CONCLUSION

The question involved is one of great public importance in the administration of the Revenue Acts. Moreover, the conclusion reached below conflicts in vital respects with several decisions of this Court. It is therefore respectfully submitted that the petition be granted.

CHARLES FAHY,  
*Solicitor General.*

FEBRUARY 1944.

## APPENDIX A

### Internal Revenue Code:

#### SEC. 11. NORMAL TAX ON INDIVIDUALS.

There shall be levied, collected, and paid for each taxable year upon the net income of every individual a normal tax of 4 per centum of the amount of the net income in excess of the credits against net income provided in section 25. (26 U. S. C. 1940 ed., Sec. 11.)

#### SEC. 12. SURTAX ON INDIVIDUALS.

(b) *Rates of Surtax.*—There shall be levied, collected, and paid for each taxable year upon the surtax net income of every individual a surtax as follows:

(26 U. S. C. 1940 ed., Sec. 12.)

#### SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and

income derived from any source whatever. \* \* \*

(26 U. S. C. 1940 ed.; Sec. 22.)

Oklahoma Statutes Annotated (1941), Title 32:

SEC. 51. *Community property law—Election to come under act.*—This Act shall be available only to and apply only to husbands and wives and to their property for a period of time from the first day of the month in any year subsequent to their filing their written election to come under the terms of this Act until either an absolute decree of divorce is rendered dissolving their marriage, or until the death of one of them.

SEC. 52. *Election to come under act, form of—Filing.*—The written election to come under the terms of this Act, referred to in Section 1 of this Act, shall be a written instrument signed and acknowledged in duplicate by both husband and wife, stating in substance that they desire to avail themselves of the Act and have same apply to them and to their property on the first day of the next month in any year subsequent to the filing thereof in both the office of the county clerk and the Secretary of State as hereinafter provided. Acknowledgments shall be in the form, and may be taken before any officer now prescribed by law for acknowledgments to conveyances of real estate. One of the said written instruments shall be filed in the office of the county clerk of the county of the residence of the signers thereof, and one in the office of the Secretary of State. The county clerks and the Secretary of State shall cause all such instruments to be recorded

in records kept for that purpose, and to be properly indexed.

**SEC. 53. *Husband's separate property.*—**

All property, both real and personal, of the husband owned or claimed by him before the effective date of the election to come under the terms of the Act, as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the wife's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be his separate property. The separate property of the husband shall not be subject to the debts contracted by the wife or liable for her torts, either before or after the effective date of said election, except as may be permitted by law as to his property prior to the enactment of this Act. The husband shall have the sole management, control and disposition of his separate property, both real and personal, to the extent permitted by law as to his property prior to the enactment of this Act.

**SEC. 54. *Wife's separate property.*—**

All property, both real and personal, of the wife owned or claimed by her before the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, and that acquired afterwards by gift, including gifts of the husband's interest in community property, by division of community property, by devise, or by descent, as also the increase of all lands thus owned or acquired, shall be her separate property. The separate property of the wife shall not be subject to the debts contracted by the husband or liable for his torts, either before or after the effective



date of said election, except as may be permitted by law as to her property prior to the enactment of this Act. The wife shall have the sole management, control and disposition of her separate property, both real and personal, to the extent permitted by law as to her property prior to the enactment of this Act.

*SEC. 55. Compensation for injuries as separate property.*—All property or moneys received as compensation for personal injuries sustained either by the husband or the wife shall be the separate property of the person sustaining such injuries.

*SEC. 56. Property deemed community or common property — Control-bank deposits.*—All property acquired by the husband or the wife after the effective date of the election to come under the terms of the Act as provided in Section 1 of this Act, except that which is separate property of either one or the other, shall be deemed the community or common property of the husband and the wife and each, subject to the provisions of the Act, shall be vested with an undivided one-half interest therein. The wife shall have the management and control and may dispose of that portion of the community property consisting of her earnings, all rents, interest, dividends, incomes and other profits for her separate estate and all other community property the title to which stands in her name. The husband shall have the management and control and may dispose of all other community property, provided, however, that the homestead, if community property, shall not be sold, encumbered, or otherwise disposed of, except in the manner as is provided by law prior to the enactment of this

Act, and further provided, that any funds on deposit in any bank or banking institution, whether in the name of the husband or the wife, shall be presumed to be the separate property of the party in whose name they stand, regardless of who made the deposit, and unless said bank or banking institution is notified to the contrary, it shall be governed accordingly in honoring checks and orders against such account.

SEC. 57. *Property as subject to debts or liabilities of spouses—Exemptions.*—The separate property of the wife and that portion of community property, record title to which is in her name or which is under the management, control and disposition of the wife, shall be subject to debts contracted by the wife arising out of tort, or otherwise, but not to debts or liabilities of the husband. The separate property of the husband and that portion of the community property, record title to which is in his name or which is under the management, control and disposition of the husband shall be subject to debts contracted by the husband or liabilities of the husband arising out of tort or otherwise, but not the debts or liabilities of the wife. The husband and the wife, and each of them, shall be entitled to the exemptions to which they, or either of them, are now entitled under the laws existing prior to the enactment of this Act.

SEC. 58. *Creditors' rights in community property.*—No creditor shall have recourse to the community property for the payment of debts or liabilities created by either the husband or the wife, except as provided in Section 7 of this Act, provided, however, that any creditor may satisfy his claim or

demand out of the community property which was under the management, control and disposition of the spouse incurring the indebtedness or liability at the time the debt or liability was contracted or created, and which has been subsequently conveyed or transferred to the other spouse and is under the management, control and disposition of said other spouse, without proof that said creditor relied upon said community property in advancing said credit, but without prejudice to the rights of the third party purchasers, incumbrancers, or other creditors or grantees; and provided further, that the husband or wife in paying community debts shall, as between themselves, charge the same against community property.

SEC. 59. *Conveyances between spouses of community property—Creditors' rights not affected.*—The husband may give, grant, bargain, sell or convey directly to his wife, and a wife may give, grant, bargain, sell or convey directly to her husband, his or her community right, title, interest or estate in all or any property of their community real or personal property. Every deed and conveyance made from the husband to the wife or from the wife to the husband shall operate to divest the property therein described of every claim or demand as community property, and shall vest the same in the grantee as the separate property of the grantee; provided, however, that the deeds, conveyances or transfers hereby authorized shall not affect any existing equity in favor of creditors of the grantor at the time of such transfer, gift or encumbrance.

SEC. 60. *Dissolution of marriage—Division of community property.*—In the event of the dissolution of marriage by decree of any court of competent jurisdiction, community property shall be divided between the parties by the court granting the decree, in such proportions as, such court, from the facts in the case, shall deem just and equitable, and such division shall be subject to revision on appeal in all respects including the exercise of discretion by the court below.

SEC. 61. *Incapacity of spouse—Conviction—Abandonment—Habitual drunkard—Substitution of other spouse.*—Whenever the husband, or the wife is non compos mentis, or had been convicted of a felony or sentenced to imprisonment for a period of more than one year, or whenever the husband has abandoned his wife and family and left her and his family, if they have children, without support, or whenever the husband or the wife is an habitual drunkard, or for any other reason is incapacitated to manage, control, or dispose of the community property, the other spouse may present a petition, duly verified, to the district court of the county wherein they reside, or if they are nonresidents wherein any of the community property is located or situated, stating the name of the incapacitated spouse, a description of all community property, both real and personal, and the facts which render the other spouse incapacitated to manage, control or dispose of the community property, and praying that the spouse filing the petition be substituted for the incapacitated spouse as to the management, control or disposition of

the community property then under the management, control and disposition of said spouse with the same power of managing, controlling and disposing of the community property as was vested in the incapacitated spouse.

SEC. 62. *Service of process in proceedings for substitution of spouse.*—In all such cases service of process shall be had as in other civil actions, provided, however, that where it is alleged that the other spouse is non compos mentis, a guardian ad litem shall be appointed having such powers as in other civil actions.

SEC. 63. *Hearing on petition for substitution—Judgment.*—Upon the hearing of the petition so filed, the court shall render judgment therein either dismissing said petition or adjudging the spouse filing same to have such power of managing, controlling and disposing of the community property, either real or personal, formerly under the management, control and disposition of the other spouse as to the court may appear to be just, proper, equitable, and to the best interests of said estate.

SEC. 64. *Recording of judgment in proceeding for substitution.*—All judgments rendered as in the preceding Section provided shall be recorded in the office of the county clerk of the county where any property affected thereby is situated and such judgment when so rendered shall be notice of the facts therein set out.

SEC. 65. *Death of spouse—Administration of community property—Interest of survivor—Homestead.*—Upon the death of the husband or the wife, the surviving spouse shall administer all community

property in the same manner, and with the same duties, privileges, and authority as are vested in a surviving partner to administer and settle the affairs of a partnership upon the death of the other partner, as provided by Section 1197, Oklahoma Statutes, 1931; provided that the surviving husband or wife shall not be disqualified from acting as executor or administrator of the estate of the deceased husband or wife; and provided further, that the survivor of the husband or wife shall pay out of the community property, except the homestead and exempt property, all debts of the community, whether created by the husband or the wife; and provided further, that when all debts of the community shall have been fully satisfied the survivor shall

transfer and convey to the administrator or executor of the deceased one-half of the community property remaining to be administered and distributed as other property of the estate either subject to the terms of the will of the deceased or under the laws of descent and distribution as the case may be, and thereafter all the interest of the surviving partner in said community property shall be that of a tenant in common; and provided further, that any interest in a homestead so conveyed shall not be subject to administration under the laws of this State, except in the manner provided by law at the time of the enactment of this Act.



## APPENDIX B

### PROPERTY RIGHTS OF HUSBAND AND WIFE UNDER OKLAHOMA STATUTES<sup>1</sup>

#### SPOUSES NOT ELECTING COMMUNITY PROPERTY

(1) Apart from mutual obligation of support wife has no legal interest in husband's earnings or in income from his separate property, and husband has no legal interest in wife's earnings or in income from her separate property. Oklahoma Statutes Annotated, Title 32, Sections 3-4.

(2) Apart from the obligation of support the husband's earnings and the income from his separate property are not subject to the wife's debts, and the wife's earnings and the income from her separate property are not subject to the husband's debts. Title 32, Section 9; *Baker v. Witten*, 1 Oklahoma 160.

(3) The spouses may contract with each other respecting their property rights. Title 32, Section 5.

#### SPOUSES ELECTING COMMUNITY PROPERTY

(1) Apart from mutual obligation of support wife can assert no right in husband's earnings or in income from his separate property, and husband can assert no right in wife's earnings or the income from her separate property. Title 32, Section 56.

(2) Apart from the obligation of support the husband's earnings and the income from his separate property are not subject to the wife's debts, and the wife's earnings and the income from her separate property are not subject to the husband's debts. Title 32, Sections 57 and 58.

(3) Spouses may "give, grant, bargain, sell or convey" directly to each other any community right, title, interest or estate. Title 32, Section 59.

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<sup>1</sup> Citations are to the Oklahoma Statutes Annotated.

(4) In the event of divorce the wife may have alimony in such amount as the court may deem just and equitable. With respect to property acquired by the parties jointly during their marriage "whether the title thereto be in either or both of said parties, the court shall make such division between the parties respectively as may appear just and reasonable". Title 12, Section 1278.

(5) On imprisonment or abandonment of one spouse the other may by court action succeed to the management and control of the other's property. Title 32, Section 13.

(6) If not more than one child, one-half of the estate goes to surviving spouse. If more than one child then surviving spouse takes a one-third share. Title 81, Section 213. No spouse can defeat the other's right of intestate succession by will. Title 81, Section 44.

(4) In the event of divorce community property shall be divided between the parties, in such proportion as the court from the facts in the case shall deem just and equitable. Title 32, Section 60. The election of the community rather clearly does not affect the wife's right to alimony under the general statutes.

(5) On the incapacity of or abandonment by one spouse the remaining spouse may by court action be substituted to manage, control, and dispose of the community property formerly managed, etc., by the other. Title 32, Section 61.

(6) On death of one spouse one-half of the community property after payment of community debts goes to the survivor. The other half passes under the terms of the deceased's will or under the laws of descent and distribution. Title 32, Section 65.